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**United States Department of Energy  
Office of Hearings and Appeals**

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| In the Matter of: Personnel Security Hearing | ) |                       |
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| Filing Date: March 28, 2022                  | ) | Case No.: PSH-22-0071 |
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Issued: June 24, 2022

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**Administrative Judge Decision**

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James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (the “Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (“Adjudicative Guidelines”), I conclude that the Individual’s access authorization should be restored.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. The DOE Local Security Office (LSO) discovered information regarding the Individual’s alcohol use. The information prompted the LSO to request that the Individual be evaluated by a DOE-consultant Psychiatrist (“Psychiatrist”). Afterward, the LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review

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<sup>1</sup> The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual presented the testimony of three witnesses and testified on his own behalf. The LSO presented the testimony of the Psychiatrist. The Individual submitted seven exhibits, marked Exhibits A through G. The LSO submitted twelve exhibits, marked Exhibits 1 through 11.<sup>2</sup>

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1 at 5.

Guideline G provides that "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern include "[a]lcohol-related incidents away from work, such as driving while under the influence . . . , regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder" and "[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]" *Id.* at ¶ 22(a) and (c). The SSC cited that, in December 2021, the Psychiatrist evaluated the Individual and subsequently concluded that he was habitually consuming alcohol to the point of impaired judgment, and, in October 2021, local authorities arrested and charged the Individual with Driving Under the Influence of Intoxicating Liquors (DUI). Ex. 1 at 5. The cited information justifies the LSO's invocation of Guideline G.

## III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization.

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<sup>2</sup> The LSO's exhibits were combined and submitted in a single, 156-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. FINDINGS OF FACT**

The record includes a Supplemental Incident Report that the Individual submitted to his employer after his October 2021 arrest for DUI. Ex. 7. The included police report indicates that the Individual was observed in a vehicle “sitting in the driver seat half inside the vehicle[.]” Ex. 6 at 24. He was later arrested and charged with DUI after submitting to Standardized Field Sobriety Tests and providing breath samples. *Id.* at 24-25.

In response to the DOE’s 2021 Letter of Interrogatory (LOI), the Individual provided more detail regarding the DUI and his alcohol use. He explained that he consumed half a pint of whiskey within two hours prior to his DUI, and he admitted that he was intoxicated at the time of the incident. Ex. 8 at 50. He reported subsequently joining an alcohol treatment program, starting to attend Alcoholics Anonymous (AA) meetings, attending online alcohol recovery classes, and attending treatment provided by his employer. *Id.* at 51. He also reported that he had stopped consuming alcohol. *Id.* at 52.

The record includes the report the Psychiatrist provided after evaluating the Individual in December 2021. Ex. 9. During the evaluation, the Individual reported that he had been receiving individual counseling and group therapy for his alcohol use, and he was attending six meetings a week. *Id.* at 63. As part of the evaluation, the Psychiatrist contacted the Individual’s treatment providers for his individual and group treatment programs, and the providers stated that he was following their recommendations. *Id.* at 65-66. However, based on the Individual’s history of alcohol consumption as reported to the treatment providers, the Psychiatrist concluded that the Individual had been habitually consuming alcohol to the point of impaired judgment. *Id.* at 67.

During the evaluation, the Individual submitted to a phosphatidylethanol (PEth) test to detect alcohol consumption, and the negative result corroborated the Individual’s statements to the Psychiatrist regarding his recent abstinence. *Id.* at 66. The Psychiatrist opined that the Individual was early in the treatment recovery process and therefore had not yet shown adequate evidence of rehabilitation and reformation. *Id.* at 67. The Psychiatrist recommended that the Individual complete his current treatment programs, continue aftercare such as SMART recovery or AA for an additional six months, and remain abstinent from alcohol for six months. *Id.*

The record includes an AA attendance sheet that indicates the Individual has been attending meetings weekly since November 2021. Ex. C. He also provided a certificate of completion for the six-week group therapy program and a certificate of completion for an Intensive Outpatient Program (IOP), which he completed in March 2022. Ex. D. He also provided attendance sheets that indicate he has been attending two separate aftercare programs. Ex. D at 2, 4-6. Finally, the

record includes the results from PEth tests that the Individual underwent in December 2021, January 2022, March 2022, April 2022, and May 2022. Ex. E; Ex. F. All results were negative. *Id.*

At the hearing, the Individual's counselor ("Counselor") testified. The Counselor provides treatment through the Individual's employer's Employee Assistance Program (EAP), and she first met with the Individual in early November 2021 because the Individual proactively reached out to the EAP after his DUI. Tr. at 13. She testified that the Individual completed her six-week group alcohol education and awareness class in January 2022 before participating in the EAP aftercare group program, which he continues to attend weekly. *Id.* The Counselor described how the Individual learned through treatment "that alcohol can lead to trouble for [him]." *Id.* at 18. She also testified that the Individual had reached out to her for support when he was feeling "stressed or anxious" during recovery, she saw him bond and connect with other individuals participating in her group program, and he consistently followed all of her treatment recommendations. *Id.* at 19-20. The Counselor gave the Individual a very good prognosis. *Id.* at 22.

A substance abuse counselor for the Individual ("SA Counselor") testified that the Individual completed a twelve-week IOP in March 2022 that included weekly individual therapy and peer group sessions. *Id.* at 27, 29. The SA Counselor reported that the Individual voluntarily chose to continue treatment through an IOP aftercare program.<sup>3</sup> *Id.* at 28. The SA Counselor further testified that the Individual is "an inspiration" to all of the program co-participants and that the Individual is "doing great" and "will continue to do well." *Id.* at 30, 32.

The Individual's current alcohol addiction counselor ("Addiction Counselor") testified that the individual is one of her "good guys" because he "keeps showing up" to the IOP aftercare program, and he does exactly what he is supposed to do, sometimes going "above" her recommendations. *Id.* at 45. She testified that she took over his treatment from his previous counselor.<sup>4</sup> *Id.* at 44. She described his consistent participation in aftercare treatment, stated that he has a "great attitude," and gave the Individual an excellent prognosis. *Id.* at 47.

The Individual testified about the circumstances of his DUI and his subsequent actions. He testified that, on the day of the DUI, he consumed whiskey while visiting with an acquaintance. *Id.* at 37. The Individual consumed more alcohol than he originally intended, and he attempted to drive home. *Id.* He testified that he accepted responsibility for driving under the influence and putting himself in the position to be charged with DUI, and he viewed it as a learning experience that had a big impact on him. *Id.* at 41, 53. He characterized his decision to drive under the influence as "stupid." *Id.* at 53.

He confirmed that he proactively reached out to EAP after his DUI, and he testified that he continues to attend and benefit from AA, the online recovery course, and aftercare treatment. *Id.* at 54, 56-57. He explained that the various programs help him in different ways. Tr. at 56. For

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<sup>3</sup> This is separate from the EAP aftercare treatment program.

<sup>4</sup> The Addiction Counselor's predecessor provided a written statement on the Individual's behalf that stated that the Individual appeared dedicated to the treatment process, that he had been fully compliant, and that his conduct indicated a favorable prognosis. Ex. G.

example, he finds AA motivational because he gets to hear and learn from the stories of other participants. *Id.* at 56. Alternatively, he benefits from EAP aftercare by interacting with people closer to his age who also work for his employer. *Id.* at 57.

The Individual testified that he stopped consuming alcohol in late October 2021 and that he had been abstinent for seven months. *Id.* at 55. He testified that he intended to abstain indefinitely. *Id.* at 59, 62. He further testified that his current girlfriend supports his sobriety and that she also stopped consuming alcohol. *Id.* at 39-40. The Individual reflected on how he wanted to avoid getting into trouble or causing further stress for his family. *Id.* at 51. He testified that he had successfully avoided alcohol in social settings, even when he was with friends with whom he used to consume alcohol, because he has been able to avoid his triggers by recognizing the consequences of alcohol consumption. *Id.* at 58, 71. He also testified that his friends had been supportive of his decision to abstain. *Id.* at 71.

Finally, the Psychiatrist testified that the Individual's treatment progress, described above, had met all of the Psychiatrist's treatment recommendations, and the Psychiatrist opined that the Individual had a good prognosis. *Id.* at 85. In reaching his opinion, the Psychiatrist noted that the Individual had a support system, "available interventions," and a commitment to sobriety. *Id.* The Psychiatrist further concluded that the Individual had rehabilitated or reformed his habitual use of alcohol. *Id.* at 89.

## **V. ANALYSIS**

### **A. Guideline G Considerations**

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program[.]

Adjudicative Guidelines at ¶ 23.

The Individual brought forth sufficient evidence to apply ¶ 23(b) and ¶ 23(c) to resolve the Guideline G security concerns. Because I rely upon much of the same evidence in applying both mitigating factors, the following analysis addresses them together.

First, there is ample evidence that the Individual acknowledged his pattern of maladaptive alcohol use. His testimony demonstrates that he understood his alcohol use was a problem, and he proactively set out to address it by following the recommendations of his treatment providers. He

also identified and reflected on how his poor judgement precipitated his DUI and how his conduct negatively impacted his life and his family, and he expressed regret for his behavior.

Second, the Individual put forth evidence of the actions that he has taken to overcome the problem: he stopped consuming alcohol; he successfully completed a six-week treatment program and an IOP; he is currently participating in aftercare treatment, AA, and online treatment classes; and he continues to maintain his sobriety. Thus, the record establishes that he is currently participating in treatment and there is no evidence in the record that the Individual has a history of relapse.

Finally, the Individual demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. First, he demonstrated that he has abstained from alcohol for a period that exceeded the Psychologist's recommendation. Second, the Psychiatrist opined that the Individual had met all of his treatment recommendations and reformed and rehabilitated his habitual consumption of alcohol, and I conclude the Individual is making satisfactory progress in his treatment programs. In reaching my conclusion, I favorably considered the Individual's candor and agree with the Psychiatrist's opinion that the Individual has a good prognosis, which is in line with the positive opinions of the Individual's treatment providers. Accordingly, I find that the Individual has resolved the Guideline G security concerns.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual's access authorization should be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals